



INTERIOR BOARD OF INDIAN APPEALS

Harold Dahl v. Aberdeen Area Director, Bureau of Indian Affairs

31 IBIA 106 (08/04/1997)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

HAROLD DAHL,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 97-56-A
ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 4, 1997

This is an appeal from an October 30, 1996, decision of the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), assessing trespass penalties and damages in the amount of \$487.50 for cattle trespass on the Fort Berthold Reservation. For the reasons discussed below, the Board affirms the Area Director's decision.

In March 1995, several allotments on the reservation, formerly included in range units 207 and 238, were removed from the range units at the request of the landowners, who stated that they wished to lease their land to Leon Charging. The landowners apparently entered into a lease or other arrangement with Charging, although no lease was submitted to BIA for approval. Appellant evidently had an arrangement by which his cattle were being run on the land leased to Charging.

Between May 7, 1996, and June 1, 1996, BIA employees observed Appellant's cattle on the range units. ^{1/} Beginning on May 8, 1996, the Superintendent, Fort Berthold Agency, notified Appellant by letter and by telephone that his cattle were in trespass. The cattle were removed from the range units on June 1, 1996.

On July 25, 1996, the Superintendent assessed Appellant \$1,864.00 in trespass penalties and damages. Appellant appealed to the Area Director, who reduced the assessment to \$487.50 upon finding that the Superintendent had not justified the remainder of the amount assessed.

On appeal to the Board, Appellant states: "I am asking that the balance of \$487.50 be forgiven. Due to the fact that my cost for pasturing was more than the cost at the feed lot I took them from." Notice of Appeal at 3. Appellant does not deny that his cattle were in trespass. Nor does he otherwise challenge the assessment against him.

^{1/} It appears that no fence had been constructed between the removed allotments and the range units although, upon approving the removal in March 1995, the Superintendent had advised the owners of the removed allotments that it was their responsibility to fence.

The Board has held that, under 25 C.F.R. § 166.24(b), a BIA Superintendent has a mandatory duty to collect penalties and damages from the owner of livestock found grazing in trespass on trust or restricted Indian lands. E.g., Cheyenne River Sioux Tribe v. Acting Aberdeen Area Director, 28 IBIA 288, 294 (1995), and cases cited therein. Thus, neither BIA nor this Board may forgive penalties and damages which have been properly assessed.

Appellant has failed to show error in the Area Director's assessment of penalties and damages.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's October 30, 1996, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge